

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT  
DECISION NO. 5338 AS A PRECEDENT  
DECISION PURSUANT TO SECTION  
409 OF THE UNEMPLOYMENT  
INSURANCE CODE.

In the Matter of:

ADELINE B. WHITERMORE  
(Claimant)  
S.S.A. No.

KIMBALL SANITARIUM  
(Employer)

PRECEDENT  
BENEFIT DECISION  
No. P-B-219

FORMERLY BENEFIT DECISION No. 5338
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The above-named claimant appealed from the decision of a Referee (LA-19153) which held that she was disqualified for benefits under Sections 58(a)(2) (now section 1256 of the Unemployment Insurance Code) and 58(b) of the Unemployment Insurance Act (now section 1260 of the Unemployment Insurance Code).

Based on the record before us, our statement of fact, reason for decision and decision are as follows:

STATEMENT OF FACT

The claimant was employed as a practical nurse by the employer for five months and was discharged by him on October 22, 1948. The facts leading up to the discharge show that on October 9, 1948, the employer's superintendent assigned the claimant and another employee to work in the employer's laundry. While engaged in this work a fellow employee who also performed duties as a practical nurse approached the claimant and requested that she leave the work she was doing to aid such employee in feeding the patients of the sanitarium. There is a conflict in the evidence as to whether this employee indicated to the claimant that the orders came from the superintendent. Although the claimant had previously

done this work and it was part of her usual duties, she refused to follow the instructions because she had been instructed to perform a certain task by the superintendent and she did not believe the employee had any authority to countermand such instructions and issue others. The claimant made no inquiry of the superintendent to determine whether the instructions originated with her. The employer testified at the hearing before the Referee that the employee who issued the instructions to the claimant was an assistant to the superintendent and was carrying out the orders which had emanated from the superintendent. On one prior occasion an instruction issued by this employee to the claimant and other employees had been countermanded by the superintendent. The claimant had never been informed that such employee occupied a position of authority. She assumed such employee was at the same level as she. The claimant continued working until October 22, 1948, when the employer discharged her because she was inefficient and also because she allegedly had been insubordinate on October 9, 1948.

On November 1, 1948, the claimant registered for work and filed a claim for benefits in the Glendale office of the Department of Employment. On December 17, 1948, the Department determined that the claimant was not subject to disqualification under the provisions of Section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the Unemployment Insurance Code) and met the eligibility requirements of Section 57(c) of the Act (now section 1253(c) of the Unemployment Insurance Code). From that portion of the determination which held that the claimant was not subject to disqualification under Section 58(a)(2) (now section 1256 of the Unemployment Insurance Code) the employer appealed to a Referee who held that the claimant had been discharged for misconduct connected with her work and was subject to disqualification as provided in Section 58(a)(2) (now section 1256 of the Unemployment Insurance Code) and 58(b) of the Act (now section 1260 of the Unemployment Insurance Code).

#### REASON FOR DECISION

Under the particular facts herein we cannot see in the claimant's conduct such a disregard of the employer's interest as would constitute misconduct under the Unemployment Insurance Act. The claimant did not know nor were the facts adduced to charge her with knowledge that the employee who issued certain

instructions to her to leave one work assignment and perform another, had such authority. There had been no clear delineation of authority by the employer. Her refusal to follow such instructions without checking as to their source because she had been assigned certain other work to do by the superintendent, while perhaps an exercise of poor judgement, was not shown to be an intentional or wilful action on the part of the claimant amounting to insubordination. It is our opinion that the claimant was discharged for causes other than misconduct connected with her most recent work and she is therefore not subject to disqualification for benefits within the meaning of Section 58(a)(2) of the Unemployment Insurance Act (now section 1256 of the Unemployment Insurance Code).

#### DECISION

The decision of the Referee is reversed. Benefits are allowed provided the claimant is otherwise eligible.

Sacramento, California, March 25, 1949.

#### CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5338 is hereby designated as Precedent Decision No. P-B-219.

Sacramento, California, February 5, 1976.

#### CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT